STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Shelton Board of Education

On behalf of the Parents:	Attorney David C. Shaw Law Offices of David C. Shaw, LLC 34 Jerome Avenue, Suite 210 Bloomfield, CT 06002-2463
On behalf of the Board:	Attorney Christine L. Chinni Shipman & Goodwin LLP One Constitution Plaza Hartford, CT 06103-1919
Before Hearing Officer:	Scott P. Myers, J.D., M.A. (Clinical Psychology)

FINAL DECISION AND ORDER

SUMMARY

This matter was commenced by the Parents by request dated June 4, 2004 (a Friday). The Parents challenged a decision made at a PPT convened on May 28, 2004 regarding the criteria for exiting the Student from eligibility for special education and related services, and challenged the adequacy of transition planning for the Student particularly in the 2003/2004 academic year. The Parents asked that the hearing officer assigned to this matter immediately enter a stay put order in light of the Board's alleged intention to terminate all services to the Student effective June 7, 2004 (the following Monday). Upon review of the June 4, 2004 letter, the Hearing Officer immediately attempted to arrange a telephone conference to address the need for emergency stay put relief, but was advised by counsel for the Parents that there was no longer a need for entry of such an order.

By letter dated June 15, 2004, the Parents requested that the Hearing Officer recuse himself. The Board objected to the motion, which was denied by order dated June 17, 2004. That motion appears to have been based on a mistaken assumption regarding how this matter was assigned to this Hearing Officer.

A pre-hearing conference ("PHC") was convened on June 17. Each party attended through counsel. Three hearing dates were identified (June 29, July 12 and July 13) and a schedule for the exchange of witness list and exhibits was entered. In accordance with the June 17 scheduling order, the parties submitted their records and witness lists. All three of the scheduled hearing dates were ultimately cancelled. This matter was reported settled on August 3 and is dismissed with prejudice except to the extent that the settlement agreement between the parties provides otherwise.

ISSUES

The statement of issues evolved over the course of the hearing. As identified in the July 11 Second Supplemental Order, the issues to be resolved at hearing were as follows:

1. Whether the criteria selected at the June 21, 2004 PPT for exiting the Student from eligibility for special education and related services (age 21) is required to provide the Student with FAPE under the substantive standards of the applicable Federal and state law, and, if not what should the exit criteria be?

2. Whether the decisions made at the May 23, 2003 and January 29, 2004 PPTs regarding the criteria for exiting the Student from eligibility for special education and related services comported with the substantive and procedural requirements of the IDEA and, if not, to what relief is the Student entitled?

3. Whether, in light of the Student's circumstances and needs at the time and the transition planning issues raised by the Parents at and after the January 29, 2004 PPT, the actions of the May 28, 2004 PPT exiting the Student from eligibility for special education and related services effective June 7, 2004 violated the Student's substantive and/or procedural rights under the IDEA and, if so, to what relief is the Student entitled?

4. Whether, in light of the Student's circumstances and needs and the implementation of the transition planning related components of her IEPs in the preceding period, the transition planning components of the Student's IEPs developed at the May 23, 2003 and January 29, 2004 PPTs satisfied the substantive and procedural requirements of the IDEA, and, if not, to what relief is the Student entitled?

5. Whether the Board's decision to go forward with a PPT on June 21, 2004 without the Parents denied the Student a FAPE and violated the due process rights of the Parents and the Student, and, if so, whether the Hearing Officer should declare the IEP developed at that PPT "null and void" as requested by the Parents?

6. What relief is appropriate regarding future programming for the Student in light of the determinations made on the preceding issues and the evidence submitted at hearing?

FINDINGS OF FACT

Based on the oral and written representations of counsel for the parties:

1. There is no dispute that the Student is eligible to receive special education and related services under the applicable Federal and Connecticut special education laws

and no dispute as to her classification under those laws.

2. This hearing was commenced following a decision made by the Board participants at the May 28, 2004 PPT terminating the Student's eligibility for special education and related services effective June 7, 2004.

3. At the joint request of the parties, the date for the issuance of the Final Decision and Order in this matter was extended pursuant to Section 10-76h-9(e) of the Regulations of Connecticut State Agencies (the "Regulations") from July 19, 2004 to and including August 19, 2004 to permit the parties an opportunity to settle this matter. In light of the Board's commitment to maintain the Student's current educational programming in place pending the outcome of this hearing, neither party was prejudiced and the Student's educational interests were not harmed by granting that request.

4. The Parties reported that they have resolved their disputes through a written settlement agreement.

5. The parties have not asked the Hearing Officer to read their settlement agreement into the record pursuant to Regulation 10-76h-16(d) or asked for any further relief.

CONCLUSIONS OF LAW

1. Regulation 10-76h-16(d) provides that: "A settlement agreement shall not constitute a final decision, prescription or order of the hearing officer." Pursuant to this Regulation, the Hearing Officer does not adopt the settlement agreement as a Final Decision and Order in this matter and otherwise reaches no conclusions of law.

FINAL DECISION AND ORDER

1. This matter is dismissed with prejudice except as otherwise expressly provided in the settlement agreement between the parties.

COMMENT PURSUANT TO REGULATION 10-76h-16(b)

Normally, the report of a settlement would render unnecessary anything other than a pro forma Final Decision and Order dismissing this matter. However, the nature and extent of the rhetoric in this matter warrant something more. The Hearing Officer offers the following comments so that should counsel for either of the parties appear in a matter before him in the future, there will be no misunderstanding as to his position on these matters.

Representations by Counsel. Factual assertions made by counsel for a party at any point in the hearing process, whether in writing or orally, on the record at hearing or off the record at the PHC, have evidentiary force and value under the applicable rules of evidence and are therefore subject to testing by the Hearing Officer or the opposing party through examination of that

counsel's client. The Department's Regulations provide that the Hearing Officer may question a party at any time regarding any matter and allow the Hearing Officer broad discretion to determine the timing and manner in which evidence is presented. In this case, counsel for one party made factual assertions regarding certain events which were in dispute in this case. In the context of this case, the Hearing Officer deemed it appropriate to request a written explanation from that counsel's client regarding some of those factual assertions prior to the commencement of the testimonial phase of the hearing. That request is within the Hearing Officer's discretion and was not, as claimed by counsel for that party, an improper effort by the Hearing Officer to conduct discovery on behalf of the other party or a reflection of any bias or prejudgment by the Hearing Officer.

Settlement Efforts. This Hearing Officer believes that a student's educational interests are best advanced if the parties can resolve their disputes amicably by settlement where possible, rather than through a decision on the merits following a litigated proceeding. Sometimes it is necessary to commence a hearing process to jump start settlement efforts. The fact that a hearing has commenced, however, does not mean that efforts to settle cannot also proceed. This Hearing Officer routinely encourages parties in matters before him to take advantage of any opportunities that may arise during the course of the hearing to settle their disputes, recognizing that parties cannot be compelled to participate in settlement discussions if they do not desire to do so.

The Board in this case, apparently in response to the request for hearing proposed to convene a PPT on June 21, 2004 to address the Parents' concerns. On June 23, 2004, after the Parents submitted the report of an educational evaluation they had obtained for the Student in June 2004, the Board proposed to convene another PPT to review and consider that report. These PPTs are discussed more fully in the June 17 order, the June 23 letter from the Parents' counsel, the June 25 letter from the Board's counsel, the June 26 First Interim Order, the June 29 e-mail transmittal from Parents' counsel and the July 7 Supplemental Order.

Contrary to the claims of the Parents in this matter, the Hearing Officer's directives regarding those PPTs in the above-referenced orders were not an attempt to deprive the Parents of any of their rights under the IDEA. To be clear, the Hearing Officer will not prohibit a respondent board of education from convening a PPT or compel petitioner parents to participate in any PPT if they do not wish to do so. The orders made clear that participation by the Parents in the PPTs was without prejudice to their ability and right to pursue any of their claims in this matter. The June 17 Scheduling Order stated that:

> It remains to be seen whether and to what an extent an action of th[e June 21, 2004] PPT will moot the need for this hearing. It also remains to be seen whether the actions of that PPT will raise new issues for resolution in this hearing. [At the PHC b]oth counsel argued their positions passionately and are encouraged to put aside rhetoric to determine whether this matter can be resolved amicably through the contemplated PPT process or a settlement.

The First Interim Order stated that:

> To the extent any reconsidered IEP narrows or eliminates disputes on the substantive aspects of the Student's programming for 2004/2005, the Student's interests have been advanced. However, even assuming that the Parents agree that the reconsidered IEP satisfies all of their

> concerns, ***they are still entitled to seek a determination as to if and whether the Board violated the Student's rights*** under the IDEA with respect to the January 29, 2004, May 28, 2004 and June 21, 2004 PPTs.

(Emphasis added.) The July 7 Supplemental Order clearly stated in pertinent part as follows:

> Participation by the Parents in the PPT process required in the First Interim Order ***is without prejudice to the right of the Parents to seek a determination as to whether the Board violated the Student's substantive and procedural rights under the IDEA with respect to the January 29, 2004, May 28, 2004 and/or June 21, 2004 PPTs and to obtain relief with respect to those PPTs and IEPs.*** Similarly, participation by the Board in the PPT process required in the First Interim Order is also without prejudice to the Board's defense to any such claim as may be made. The [documentary] record (as outlined in the First Interim Order) demonstrates that there is an opportunity to resolve through the PPT process disputes regarding the Student's programming for the summer of 2004 and for the 2004/2005 school year. To the extent those efforts can moot the need for hearing on ***those*** matters, the Student's educational interests have been advanced most expeditiously and constructively. It was the Hearing Officer's intention and direction in the First Interim Order that the parties take this opportunity to address ***those*** matters on their own through mutual agreement in a PPT process before presenting them for a hearing.

(Emphasis added and in original.)

Hopefully these comments will clear up any "misunderstanding" regarding the Hearing Officer's intentions and eliminate or minimize in future cases the rhetoric that permeated this case.